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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,792	04/09/2004	Sharperson G. Johnson	84,446	1330

7590 06/15/2006

Office of Counsel Code OC4
Naval Surface Warfare Center
Indian Head Division
101 Strauss Ave., Bldg. D-31
Indian Head, MD 20640-5035

EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,792	Applicant(s) JOHNSON, SHARPERSON G.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04092004</u> . | 6) <input type="checkbox"/> Other: ____. |

NON-FINAL OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Information Disclosure Statement

2. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 9 APR 2004.

Drawings

3. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.

- a. the subject matter of claim 11.
- b. the subject matter of claim 12.
- c. the subject matter of claim 13.

- d. the subject matter of claim 14.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

5. The disclosure is objected to because of the following informalities:

- a. Page 8, line 18: replace "lever" with --level--.

Appropriate correction is required.

6. The Abstract of the Disclosure is objected to because:

- a. it lacks substance as it is not an adequate and clear statement of the contents of the disclosure. A reading of the abstract does not provide the character of the subject matter covered by the disclosure. The abstract should be more comprehensive of the disclosed subject matter by mentioning the baffles within the extender.

Correction is required. See MPEP § 608.01(b).

7. The title is acceptable.

Claim Objections

8. Claim 10 is objected to because in line 2, "attached" should be --attach--.

Correction is required.

Claim Rejections - 35 U.S.C. § 112, second paragraph

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 13 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13, line 1: "the attaching mechanism" lacks antecedent basis. It appears this claim should depend from claim 10.

Claims 19 and 20: it is not known what constitutes an "explosive manufacture process product". If these claims are revised to a proper product-by-process format, they may be subject to restriction as this art unit does not examine explosive compositions or products.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. **Claims 1-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Melvin (US 846,751).**

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The patent to Melvin discloses a feed hopper b with access h; an extender A at the top of the feed hopper; the extender having the recited angled baffles f therein; the extender A having an access port (the top portion thereof) that is inherently capable of being closed; the extender having a uniform interior diameter as seen in Fig. 2.

13. Claims 1, 4, 10, 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pemberton et al. (US 5,772,319).

The patent to Pemberton et al. discloses a feed hopper 34 with access (below 30); an extender 12 at the top of the feed hopper; the extender having an angled baffle 26 therein; the extender 12 having an access port (the top portion thereof) that is inherently capable of being closed at 86; the extender having a uniform interior diameter as seen in the Figures; the extender being attached to the feed hopper via a screw clamping mechanism 42.

14. Claims 1-5 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Benjamins (US 1,268,813).

The patent to Benjamins discloses a feed hopper 22 with access (proximate 25); an extender 11 at the top of the feed hopper; the extender having the recited angled baffles 15-19 therein; the extender 11 having an access port (the top portion thereof) that is inherently capable of being closed by element 13; and an attaching mechanism 21a to attach the extender 11 to the feed hopper 22.

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15. Claims 1, 4, and 14-16 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Donaghue et al. (US 4,369,689).

The patent to Donaghue et al. discloses an apparatus and method for processing explosive material compositions including in Figure 3 a feed hopper 33 with access (proximate 28); an extender 25 at the top of the feed hopper; the extender having an angled baffles 24 therein; the extender 12 having an access port (the top portion thereof) that is inherently capable of being closed; the extender having a uniform interior diameter as seen in the Figure; the explosive materials being conveyed from the extender 25 into the feed hopper 30; the conveying step being accomplished at least in part by agitator 22.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamins (US 1,268,813) in view of Campbell et al. (US 6,582,160).

Benjamins (US 1,268,813) does not disclose the particular attaching mechanism such as a clamp or gasket. Campbell et al. discloses a hopper 12 attached to a hopper outlet element 40 via clamp mechanism 100 that clamps the flange 14 of the hopper to

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the flange 96 of the hopper outlet element. A resilient seal ring or gasket is placed between the flanges 14 and 96. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the flanges of Benjamins with a clamp mechanism and gasket as taught by Campbell et al. for the purposes of allowing quick and easy removal and disconnection of the device for inspection, cleaning, and service and to create a sealed connection between the elements of the device (col. 7, line 34 - col. 8, line 7).

18. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donaghue et al. (US 4,369,689).

Donaghue et al. (US 4,369,689) does not disclose the recited size or volume expressed in claims 17 and 18. However, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have altered the size or volume of the device and method of Donaghue et al. to be of any desired size or volume to adapt the size or volume to the processing requirements of the materials. Furthermore, the Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984),

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses feed hopper baffle arrangements. Ricciardi and Arvanitakis disclose a flange gasket seal arrangement. Brazelton et al., Frye, and Johanson disclose flange screw attachment means. Udy et al. and Hiorth disclose the processing of explosive materials.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles E. Cooley
Primary Examiner
Art Unit 1723

11 June 2006